

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6593 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

GULABCHAND DEVRAJ SHAH, SINCE DECEASED THROUGH HEIRS & L.R.

Versus

STATE OF GUJARAT

Appearance:

MR JR NANAVATI with Mr. A.R.Thakkar for Petitioners
Mr. N.D.Gohil, ASSTT. GOVERNMENT PLEADER for
Respondent No. 1, 2

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 30/12/1999

ORAL JUDGEMENT

By means of this petition, the petitioner
has sought for quashing the order dated 19th/29th
January, 1990 passed by the Collector, Kutch district at
Bhuj at Annexure "H" and the order dated 26th November,

1990 passed by the Additional Chief Secretary (Appeals), Revenue Department at Annexure "I" to the petition. The land bearing serial no.11, sheet no.38, Chalta no. 3361 admeasuring 40 acres (120 gunthas) situated at Anjar, Dist: Kutch was given to one Jadavji Hansraj by former ruler of Kutch state by an agreement dated 30th March, 1935. Jadavji Hansraj was running Anjar Spinning and Weaving Mills Ltd. on the said land. The said land was transferred to Somchand Shankerlal by a registered deed dated 31st May, 1943. Said Somchand Shankerlal sold his rights, title and interest including Anjar Spinning and Weaving Mills Ltd. to Premchand V.Shah. A memorandum was issued by Divan of Kutch State dated 18th March, 1947 whereby Premchand Vrajlal Shah was recognised as the sole proprietor of Anjar Spinning and Weaving Mills Ltd. After the death of Premchand Shah, the property devolved upon his widow Veluben Premchand Shah. Smt. Veluben Premchand Shah transferred the said property by way of gift to the present petitioner on 29th July, 1969. The Right Verification Officer, Anjar passed a resolution dated 31st December, 1975 against the petitioner. Being aggrieved by the said order/Resolution, the petitioner preferred an appeal before the Deputy Collector, Anjar. The Deputy Collector, Anjar by his order no. City/SN/26/76 dated 29th December, 1976 set aside the order dated 31st December, 1975 passed by the Right Verification Officer, Anjar and remanded the matter to him. After the remand, the Right Verification Officer, Anjar passed the order dated 25th July, 1977. He fixed the area of sheet no. 38 as 13,30,562.75 sq.mtrs. which was less than 40 acres and the petitioner was holding any land beyond the limit of city survey. The land admeasuring 16559 sq.mtrs. situated in west site of sheet no. 38 was directed to be included with the present land totalling the area of entire land was 1,50,121.75 sq. mtrs. and the petitioner was held as a permanent lease holder of the entire land admeasuring 1,50,221.75 sq.mtrs. and a direction was given to make necessary amendment in the map. The order of Right Verification Officer, Anjar dated 25th July, 1977 was revised by the Collector under section 211 of the Bombay Land Revenue Code. First of all, the Collector issued a show cause notice dated 24th July, 1989 regarding breach of condition laid down in respect of the land given by the old Kutch State on lease for the purpose of Ginning Mill as to why the Government should not take over the possession of the entire land without giving any compensation and why the order should not be passed to recover the Government dues as arrears of land revenue within 15 days from the date of the receipt of the notice. The petitioner filed his reply to the show cause

notice at Annexure "J". The Collector, after going through the material on record, passed the order dated 19th/29th December, 1989 holding that the transfer and sale of the lease land cannot be made without prior permission of the authority. The Collector set aside the order dated 25th July, 1977 (at Annexure-E) passed by the City Survey Superintendent of Anjar and indirectly the transfer and sale made in favour of the petitioner was held illegal and the property in dispute was forfeited to the State Government.

2. The petitioner being aggrieved by the said order of the Collector, preferred Revision Application before the Secretary, Revenue Department (Appeals), Government of Gujarat, Ahmedabad, who by an order dated 14th May, 1991 dismissed the same and has confirmed the order dated 19th January, 1990 passed by the Collector, Kutch. Therefore, the petitioner has filed the present petition.

3. The learned counsel for the petitioner submitted that the authorities below have held that there is a breach of condition on which the land was leased out to the predecessor of the petitioner. But in fact, there is no breach of condition at all. The authorities below have recorded the finding regarding breach of condition which is illegal and not sustainable in the eye of law, inasmuch as the land in dispute was leased out to the predecessor of the petitioner for a Spinning and Weaving Mill and that Mill is in existence as on today also, of course, the mill is not in a working and functioning condition. The mill is not in working order due to interse disputes between the parties and legal proceedings i.e. civil suits are pending before court of law and as such, lease of the land was granted for a specific purpose and has not been used for any other purpose, except for the purpose for which it was granted. As such, there is no breach of condition at all. The learned counsel for the petitioner further contended that the rights have already been settled and accrued to the parties under the contract between Kutch State and the predecessor of the petitioner and those rights have been accrued to the parties and such rights cannot be determined in the summary proceedings under section 211 of the Bombay Land Revenue Code. Under section 211 of the Bombay Land Revenue Code, the orders of the lower authorities can be revised or reviewed but contractual rights between the parties cannot be determined in summary proceedings under section 211 of the Code. For that purpose the rights of the parties can be decided

only in regular proceedings of any suit before a court of law. Admittedly, the Government has not filed any suit for determining the rights of the petitioner. The Collector and the Secretary, (Appeals), Revenue Department have no authority to determine the rights of the parties accrued under the agreement. The authorities below have no power to determine the contractual rights settled or accrued between the parties. As such, the authorities i.e. the Collector and Secretary (Appeals), Government of Gujarat have no authority and their orders are illegal and void ab initio. In this regard, the learned advocate for the petitioner relied on the decision of a Division Bench of Bombay High Court in the case of Sambhaji Baloji Solankar vs The Mamlatdar of Baramati and others reported in AIR 1953, Bombay, 300 wherein it has been held that where the Government wants to cancel a Sanad on the ground that it was got by misrepresentation, the proper procedure to follow is not to take action under section 211 but to file a suit for avoiding the contract.

He also relied on the decision of the Full Bench of Bombay High Court in the case of State of Bombay vs. Chhaganlal Gangaram Lavar reported in AIR 1955, Bombay, 1 wherein it has been held that the authorities cannot interfere under section 211 with the contractual rights accrued to the parties. It is also observed that where there is a contract between the State and private party and the State wants to avoid that contract on the ground of misrepresentation, the proper way to avoid is to by going to a Civil Court and not by setting aside the contract by an administrative order under section 211 of the Code.

4. The learned counsel for the petitioner also submitted that the Supreme Court as well as this Court have held in various cases that suo motu powers under section 211 of the Bombay Land Revenue Code can be exercised within reasonable time and at the most one year's period is considered to be reasonable time. In the present case suo motu powers have been exercised after a period of more than 12 years. As such, suo motu exercise of revisional jurisdiction after about 12 years is illegal and not sustainable in the eye of law.

5. On the contrary, the learned Assistant Government Pleader contended that both the authorities have given concurrent findings and this Court should not interfere with the findings of the lower authorities under Article 227 of the Constitution of India. His further contention is that the lease was granted for 25 years and that was never extended. Hence, contractual

right came to an end after expiry of 25 years. It is also argued that no prior permission for transfer was taken from the authority concerned and therefore, there is a breach of condition no. 7 and that condition also includes lease of land and other exemption granted to the person concerned. The learned Assistant Government Pleader also argued that jurisdiction of the authorities in respect of contractual rights of the parties is a new ground which is being taken for the first time in this Court and this Court should not take cognizance of that new ground. Regarding delay in exercising suo motu powers under section 211 of the Bombay Land Revenue Code, according to him, there is no limitation as considered by the Apex Court in some of the cases.

6. I have carefully considered the rival contentions of the learned advocates for the parties and perused the relevant papers on record. By the deed of agreement dated 30th March, 1935 the property was leased to the predecessor of the petitioner subject to the relevant conditions that :

- (1) That the Darbar shall soon after the execution of these presents grant to the licensee a lease for twentyfive years which period will be extended from time to time as long as the Mill is in existence on terms of lease to be agreed upon in respect of one hundred and twenty years of land at Anjar in Kutch required by the licence for the purpose of erecting a Mill as aforesaid at an annual rent of Rs.1200/such rent to be payable every six months rent for that land which is taken in possession of by the licensee.
- (3) The licensee shall construct a Mill in the land at Anjar agreed to be leased to him as hereinbefore mentioned. This land will be carved and demarcated by the Survey Superintendent. It shall be utilised only for the purpose of locating Mill Building, Mill warehouse, Mill Agents' or Manager's bungalow or staff quarters, workmen premises, dispensaries, hospital, craches and any other buildings and structures which are either required for the promotion of the purpose for which the concern is intended or for the welfare of the workers and staff of the Mill.
- (7) The benefit of this agreement will not be transferrable by the licensee without permission of the Darbar.

In respect of breach of breach of the

aforesaid three conditions, the City Survey Officer passed the order on 25th July, 1977 and the show cause notice was issued by the Collector on 24th July, 1989 for the revision of the order passed by the City Survey Officer. The Deputy Collector, has held the petitioner as permanent lessee of the land in dispute and the direction was given to make necessary amendment. The notice was issued after a period of 12 years of the order passed by the Right Verification Officer, Anjar dated 25th July, 1977.

7. So far as the breach of conditions is concerned, the benefit of the agreement was not transferrable. According to the learned advocate for the petitioner, that condition relates to benefit of certain exemption of duties, taxes and monopoly etc. in the business for 10 years as is mentioned in the memorandum of the deed of 1935. The lease of the land does not amount to any benefit of the agreement and it is also stated that the land in dispute was transferred with permission of the Darbar or the authority concerned. As such, for the breach of this condition, contractual right stands settled. So far as the term "twentyfive" years of lease is concerned, the lease was granted for a period of 25 years and that term of the lease was to be extended from time to time in case, the mill remains in existence. The mill is not working, but the property has not been used for any other purpose except the purpose for which it was leased to the predecessor of the petitioner. The lease was granted for Spinning and Weaving Mills and that Mill is still in existence on the land in dispute, of course, that mill is not in working condition due to litigations between the parties. As such, it cannot be said that the petitioner has committed breach of condition no.1 as the property has not been used for any other purpose except the purpose for which it was leased out. So far as condition no. 3 is concerned, it is being used only for that purpose and it cannot be said that any breach has been committed in respect of condition no. 3. Regarding breach of condition no.7, the learned advocate for the petitioner referred the order dated 18th/22nd December, 1947 whereby the Government of Kutch recognised Premchand V Shah, the predecessor of the property as the proprietor of Anjar Spinning and Weaving Mills. Thus, the predecessor of the petitioner has already been settled as the proprietor of Anjar Spinning and Weaving Mills and no question arises for permission of Darbar for the transfer once the property has been settled with the predecessor of the petitioner with absolute right of proprietorship. As such, in my view there is no breach of condition as

alleged in the notice issued by the Collector under section 211 of the Bombay Land Revenue Code. Secondly, the Collector is incompetent to decide contractual rights accrued and settled between the parties inasmuch as at the most the Collector can revise the order of the lower authorities under section 211 of the Code, but he cannot set aside contractual rights accrued and settled to the parties based on the agreement between the parties. In the present case, the rights have already accrued to the predecessor of the petitioner and thereafter to the purchaser on the basis of the order dated 18th/22nd December, 1947 and in the summary proceedings under section 211 of the Code, the Collector cannot determine the contractual rights of the parties. At the most, the Government could have challenged the contractual rights in the regular proceedings by filing a civil suit before court of law. In the regular proceedings, contractual rights could have been decided by a court of law. In the summary proceedings under section 211 of the Code, the Collector is incompetent to interfere with the contractual rights accrued to the parties in pursuance of the agreement by the Government itself. In this connection, the Collector has mentioned in his order that Premchand Shah purchased this land in the year 1947 and the same has been granted vide order dated 22nd December, 1947 by Divan. A notification in that regard was also issued by the Government on 2.3.1951. Hence, it was unlawful and illegal to take any action against the petitioner and issue any show cause notice to him, but the Collector after making mention of this argument in this connection, has not gone into to discuss as to how he is justified to decide the matter when any right had already been settled between the parties by an order dated 22nd December, 1947 and the notification pursuant to that order issued on 2nd March, 1951. Thus, the rights have already been settled with Premchand Shah who is the predecessor of the petitioner by the Diwan of Kutch State, which cannot be decided by the Collector in the garb of suo motu powers u/s 211 of the Bombay Land Revenue Code as held in the decisions of the Bombay High Courts in the years 1953 and 1955 which are also binding on this Court.

9. The authorities below were not competent to set aside the contractual rights accrued and settled between the parties concerned. So far as the contention of the learned Assistant Government Pleader that the learned advocate for the petitioner has taken a new ground for challenging jurisdiction of the lower authorities is concerned, the petitioner has taken this ground before the Collector in reply as well as the

Collector has also noticed that fact in his judgment but has not dealt with it at all. Thus, settlement of rights is not a new ground taken by the petitioner in this petition. But even if it is a new ground, the question of law including limitation and jurisdiction can be taken at any stage in any court and even before the Apex Court. Whenever any legal question regarding jurisdiction, limitation and any other law point arises, it can be raised at any stage. As such, this contention of the learned Assistant Government Pleader is not tenable at all. So far as the question of limitation is concerned, it is true that the legislation has not provided any limitation for suo motu exercise of revisional powers under section 211 of the Bombay Land Revenue Code but in certain cases the Apex Court and High Court have held that suo motu powers of revisional jurisdiction should be exercised within a reasonable time and one year is considered as reasonable time. But in the instant case, the suo motu powers of revisional jurisdiction have been exercised after more than 12 years of course the suo motu powers can be exercised after after reasonable time where there is allegation of fraud or misrepresentation being committed by the petitioner in obtaining the orders of the competent authority, but in this case there is no allegation from the State side that when the fraud or misrepresentation of the petitioner came to light and then suo motu power of revisional jurisdiction was exercised. As such, the contention of the learned AGP in respect of limitation is not tenable in the eye of law.

10. In view of the above discussion, the orders of the Collector u/s 211 of the Bombay Land Revenue Code and of the Additional Chief Secretary are not within their competence and not sustainable in the eye of law. Thus, this petition deserves to be allowed and is accordingly allowed. The order No. Land: Vashi: 1366/89 dated 19/29-1-90 of the Collector, Kutch-Bhuj and the order No. SRD/JMN/Kutch/27/90 dated 26.11.90 of the Additional Chief Secretary (Appeals), Revenue Department are hereby quashed and set aside and the order dated 25-7-1977 holding the petitioner as a permanent lease holder, to enter his name in the record and to make necessary amendment in the map is affirmed. Rule is made absolute with no order as to costs.

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